

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7482 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KAMLESHKUMAR BALARAM

Versus

DHARAMPUR MUNICIPAL BOROUGH

Appearance:

MR AJ SHASTRI for Petitioner

MR YN RAVANI for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 15/02/99

ORAL JUDGEMENT

Heard learned advocates for the respective parties. Rule returnable today. Learned advocate Mr. Ravani appears for and waives service of rule on behalf of the respondent no. 1. Learned Addl. Government Pleader Mr. Hasurkar appears for and waives service of rule on behalf of the respondent no. 2. With the consent of the learned advocates, petition is heard and disposed of finally.

2. The petitioner herein has been serving as a Peon in Dharampur Municipal Borough, the respondent no. 1 herein [hereinafter referred to as 'the Municipal Borough']. It appears that by Resolution no. 45 dated 10th October, 1994, the Municipal Borough resolved to promote the petitioner as a Naka Clerk. The said resolution, alongwith some other resolutions of the Municipal Borough, was taken in revision by the respondent no. 2 herein, under the powers conferred upon him under section 258 of the Gujarat Municipalities Act, 1961. The respondent no. 2 under his order dated 4/5th September, 1995 quashed all the resolutions, including the resolution no. 45 dated 10th October, 1994 and directed the Municipal Borough to restore the status quo ante. Pursuant to the said order, the petitioner was reverted to his original post of Peon. In view of the above referred resolution no. 45 and the order dated 4th September, 1995 made by the respondent no. 2, the petitioner worked as a Naka Clerk for the period from 16th October, 1994 to 31st August, 1995 and received salary payable to a Naka Clerk. Pursuant to the order of status quo ante made by the respondent no. 2, the Municipal Borough has now started to recover the difference of salary paid to the petitioner as a Naka Clerk for the period from 16th October, 1994 to 31st August, 1995. Therefore, the petition.

3. Mr. Shastri, the learned advocate appearing for the petitioner has contended that no formal decision to recover the aforesaid amount has been taken by the Municipal Borough nor the petitioner has been afforded an opportunity of hearing. Besides, the petitioner is entitled to higher salary for the period when he actually rendered service on the higher post ie., that of a Naka Clerk. Mr. Ravani, the learned advocate appearing for the Municipal Borough has contended that the recovery is made in consonance with the order made by the respondent no. 2 directing the Municipal Borough to restore status quo ante.

4. It is true that the respondent no. 2 has directed the Municipal Borough to restore the status quo ante which order has been implemented and the petitioner has been reverted to the lower post of peon with effect from 1st September, 1995. However, the said order cannot be read to mean that the salary paid to the petitioner as a Naka Clerk should be recovered. Besides, if the petitioner has served on the higher post, the petitioner should be held to be entitled to the salary payable for the said post. The difference of salary cannot be

recovered from him. It is, therefore, declared that the action of the Municipal Borough in recovering the amount of difference of salary is bad and illegal. The Municipal Borough is permanently restrained from recovering any amount of the salary paid to the petitioner, on account of his having been promoted as a Naka Clerk for a short period from 16th October, 1994 to 31st August, 1995.

5. Petition is allowed accordingly. Rule is made absolute. There shall be no order as to costs.

Prakash*